



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mnr, mnsd, opr

Introduction

The landlords have applied for dispute resolution of a dispute in the tenancy at the above noted address, and requests an Order of Possession, a Monetary Order; and an order to retain the security deposit.

The female landlord attended the hearing, but the tenant did not attend the hearing. I accept the landlord's testimony that the tenant was properly served with the Application for Dispute resolution hearing package in person, on December 9, 2015. Such service satisfies the provisions of Sections 89(1) and 90 of the Residential Tenancy Act.

The tenant vacated the premises on December 29, 2015, although she stated she would return to pick up some items left outside the suite. She has not returned for these items.

Issues to Be Decided

- Has the tenancy ended, and if so, is it appropriate or necessary to issue an Order of Possession?
- Are the landlords entitled to a Monetary Order for unpaid rent?
- If so, are the landlords entitled to retain the deposit in partial satisfaction of the amount owing?

Background and Evidence

This tenancy began on or about April 1, 2015. Rent was due on the 1st day of each month in the amount of \$800.00. A security deposit of \$400.00 was paid at the start of the tenancy. The tenant paid only \$400.00 rent in November, and on November 17, 2015 she was personally served with a 10-Day Notice to End Tenancy. The tenant did not pay the rent or apply for dispute resolution within the required five days of receiving the Notice to End Tenancy. She remained in the premises until December 29, 2015, when all items were moved out, and the key returned to the landlords. She stated she would return to pick up items left outside, but has never returned. Her phone number is now disconnected. No further rent was ever paid.

Analysis

The return of the key to the landlords signalled that the tenancy had ended, and that possession of the premises was restored to the landlords. No Order of Possession is therefore required, and the landlords are free to enter and to re-rent the premises.

The landlords' claim was only for the loss of rent for November of \$400.00, but clearly the landlords have also lost rental income for December for the period while the tenant was overholding. Rule 4.2 provides that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing, and that if an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. The present claim meets these conditions as to the loss of rent for December. I therefore allow an amendment to the application for the overholding period, and accept that the tenant is therefore liable for the landlord's loss of rent for December of \$800.00, in addition to the unpaid rent for November of \$400.00. The landlord is entitled to recover the sum of \$1,200.00 from the tenant. The landlord also is entitled to retain the security deposit in partial satisfaction of this award.

Conclusion

The landlord is entitled to an award of \$800.00. I order pursuant to section 38(1)(d) that the full amount of the deposit (\$400.00) be retained, in partial satisfaction of this monetary award. I further order that the remaining balance of the award due to the landlord, equalling \$800.00 be paid immediately by the tenant to the landlords.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 29, 2016

Residential Tenancy Branch

